



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2005

Mr. Stephen C. Jacobs
Locke, Liddell & Sapp, L.L.P.
600 Travis Street, Suite 3400
Houston, Texas 77002

OR2005-02287

Dear Mr. Jacobs:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221131.

The Houston Convention Center Hotel Corporation (the "corporation"), which you represent, received a request for copies of "room block contracts" and "any catering or concessions contracts" associated with the Houston Convention Center Hotel (the "hotel").¹ You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. In addition, you provide documentation indicating that, pursuant to section 552.305 of the Government Code, you have notified Hilton Hotels Corporation ("Hilton") of the corporation's receipt of this request and of Hilton's right to submit arguments as to whether any portion of the requested information should be withheld from disclosure. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exceptions to disclosure in certain circumstances). We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹ Although the request was submitted to the City of Houston (the "city"), you inform us that the city forwarded the request to the corporation.

² We assume that the "representative sample" of records submitted to this office is truly representative the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that the submitted information includes "a contract relating to the receipt or expenditure of public or other funds by a governmental body" and is therefore generally "public information and not excepted from required disclosure . . . unless . . . expressly confidential under other law." Gov't Code § 552.022(a)(3). However, you claim that this information is excepted from disclosure under section 552.104, and we will therefore address your arguments. *See* Gov't Code § 552.104(b) (section 552.022 does not apply to information that is excepted from disclosure under section 552.104).

Section 552.104 of the Government Code protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect the government's interests when it is involved in certain commercial transactions. For example, section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.,* Open Records Decision No. 463 (1987). When a governmental body seeks protection as a competitor, however, we have stated that it must be afforded the right to claim the "competitive advantage" aspect of section 552.104 if it meets two criteria. The governmental body must first demonstrate that it has specific marketplace interests. *See* Open Records Decision No. 593 at 4 (1991) (governmental body that has been granted specific authority to compete in private marketplace may demonstrate marketplace interests analogous to those of private entity). Second, the governmental body must demonstrate actual or potential harm to its interests in a particular competitive situation. A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. *See id.* at 2. Whether release of particular information would harm the legitimate marketplace interests of a governmental body requires a showing of the possibility of some specific harm in a particular competitive situation. *Id.* at 5, 10.

In your brief to this office, you explain:

[T]he Corporation is a local government corporation organized by the City of Houston, Texas ("City") under the Texas Transportation Code. The Corporation was organized in early 2000 to aid and assist the City by developing and operating a hotel near the George R. Brown Convention Center in downtown, Houston, Texas. To that end, the Corporation engaged Hilton to manage and operate the hotel on behalf of the Corporation. The burdens and benefits of ownership of the hotel remain with the Corporation.

....

While the Corporation is a not-for-profit, local government corporation, the excess of its revenues over its expenses will inure to the benefit of the Corporation and its sponsor, the City. . . . Disclosure of the requested information would provide an advantage to competitors. By necessity, the operation of the hotel will compete with other hotels for guests and other functions customarily held in hotels. Room block agreements establish contractual relations between large, group customers and the Corporation and, among other things, identify customers and room rates. Catering and

concession contracts, and like agreements, also form a material part of the basis for revenues to the Corporation, as well as identifying customer information.

We have included, for your review, a sample of representative materials [responsive to the request.] Upon review, you will see that these materials disclose pricing information with regard to rooms, catering events and booking of convention, trade shows and other events.

Should this information be made public, the Corporation's and Hilton's pricing and costs for significant portions of its business segments would be available to competitors . . . and would obviously provide such competitors an advantage in competing with the Corporation and Hilton in attracting business or negotiating with potential customers.

Furthermore, disclosure of these agreements would provide potential customers information that they would not normally have and, accordingly, an advantage in negotiating with the Corporation and Hilton in regard to use of the Corporation's various facilities. This advantage would likely result in a loss of revenues and harm to the Corporation and the value of its assets.

Based on the arguments and circumstances presented, we conclude that you have established that the corporation has legitimate marketplace interests for the purposes of section 552.104. We also find that you have shown the possibility of specific harm if the submitted information is released. Therefore, the requested information may be withheld in accordance with section 552.104 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 221131

Enc. Submitted documents

c: Mr. Stephen A. Rosenstock
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(w/o enclosures)